No. 80-0001

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1980

ANNA STANTON GREEN,

Petitioner,

vs.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN, P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, COMMISSIONER OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, AND THE UNITED STATES POST OFFICE, AND THE NEW YORK BANK FOR SAVINGS,

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

BRIEF OF RESPONDENT HARRY MOOREHEAD IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether petitioner has a constitutional right to protection from examination by a court-appointed psychiatrist in connection with a state court proceeding to determine if petitioner is in need of a conservator of her property.

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OPINIONS BELOW

The opinions of the United States District Court of the Southern District of New York, together granting summary judgment to all defendants, are both unreported but are reproduced in petitioner's supplemental appendix (21[p]a, 31[p]a)[1] and are also found in the appendix to the court of appeals (211a, 222a).[2] The court of appeals opinion of unanimous affirmance is unreported and is reproduced in petitioner's appendix (1[p]a). The related and unreported opinions of the Supreme Court of the State of New York, Westchester County, first appointing a conservator of the property of petitioner Anna Stanton Green and then denying removal of the conservator, are omitted from petitioner's appendix and supplemental appendix but are found in the appendix to the court of appeals (37a, 44a).

STATEMENT OF THE CASE

This case challenges the constitutionality of a state court's consideration of psychiatric testimony as an aid in that court's determination of the need for the appointment of a conservator of the property of one of its citizens. Mrs. Green would urge this Court to hear her argument that

> [psychiatry] is not a bona fide medical practice, but a secular version of a religious confessional, or "soul medicine;" and its practitioners, however named, are only a secular version of "soul curers" or "soul physicians."

(Amended Complaint Paragraph 6 at 4a).

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1. References to Petitioner's Appendix in this Court are designated by the letters "[p]a".

2. References to Appellant's Appendix to the Second Circuit Court of Appeals are designated by the letter "a".

Mrs. Green would have this Court entertain her related argument that, when Justice Sirignano of the New York State Supreme Court accepted testimony from a psychiatrist in connection with Justice Sirignano's later appointment of a conservator of her property, the court violated her First Amendment rights to religious choice. Mrs. Green would also present to this Court her suggestions that the New York State Supreme Court's appointment of a conservator of her property led to her involuntary servitude in violation of the Thirteenth Amendment; and finally that the entire procedure in the courts below, both state and federal was violative of the [Fifth and] Fourteenth Amendment's due process guarantees.[3]

Respondent Harry Moorehead is the psychiatrist who was appointed by and reported pursuant to order of Justice Sirignano (117a-119a) and whose medical discipline is questioned by this action.

The district court dismissed the action as to all defendants (39[p]a).

The Second Circuit Court of Appeals affirmed unanimously (1[p]a). Motions for reargument and for reargument *en banc* were denied by the circuit court (4[p]a, 6[p]a), and this petition followed.

A comprehensive factual statement is contained in the brief of respondents Eliot Bartholomew and Robert Klipstein. We will avoid repetition of that statement herein, and adopt its contents by reference. The additional facts set forth below are those which directly bear upon the involvement of respondent Harry Moorehead.

* * *

3. The Green petition presents additional questions regarding her related claims of conspiracy in violation of her civil rights, 42 U.S.C. §§1983 and 1985, and racketeering, 18 U.S.C. §1961. Although all of the foregoing are mentioned in the petition, the only reasons for granting the writ which petitioner presents surround her First Amendment claim.

Harry Moorehead is a physician, duly licensed to practice medicine in the State of New York, and whose specialty is psychiatry (198a). On December 31, 1977, Dr. Moorehead conducted a pyschiatric examination of the petitioner, Anna Stanton Green, pursuant to the December 29, 1977 order (117a-119a) of the Supreme Court of New York State, Westchester County, P. Raymond Sirignano, Justice. Justice Sirignano's order was made in a special proceeding brought by Eliot Bartholomew seeking appointment of a conservator of the property of Mrs. Green in accordance with the provisions of New York State's Mental Hygiene Law §77.01 (8[p]a). Doctor Moorehead's written report (120a-122a) of his findings during the December 31, 1977 examination was presented to Justice Sirignano, in accordance with the December 29, 1977 order (118a).

Thereafter, at a hearing held by Justice Sirignano, on January 27, 1978, Dr. Moorehead testified that in his medical opinion, Mrs. Green was unable to care for herself or her property and that Mrs. Green's attendance at the hearing would be detrimental to her health (194a). At the January 27, 1978 hearing, Dr. Moorehead was cross-examined by John M. Perone, Esq., an attorney duly appointed as Mrs. Green's guardian *ad litem*[4] for the proceedings and by Arthur Grundig, Mrs. Green's nephew (195a).

By judgment dated February 10, 1978, and entered February 14, 1978 (39a-43a) and following Justice Sirignano's January 27, 1978 decision (37a-38a) Eliot Bartholomew was appointed conservator of the property of Anna Stanton Green. The court stated its satisfaction by clear and convincing proof (37a, 40a) in both its opinion and judgment that petitioner was in need for the appointment of a conservator of her property.

Dr. Moorehead's only other contact with the petitioner was after Eliot Bartholomew's appointment as her conservator. On

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4. The guardian's December 14, 1977 report to Justice Sirignano in connection with the special proceeding is found at 92a-100a.

June 24, 1978, Dr. Moorehead again examined Mrs. Green in preparation for a second hearing before Justice Sirignano (45a). The second hearing was held on June 28, 1978 in connection with an application that the conservator be removed (44a). Dr. Moorehead testified on June 28, 1978 that Mrs. Green's condition was unchanged from his prior examination, and that she was still unable to care for herself or her property (45a). At the June 28, 1978 hearing, Dr. Moorehead was cross-examined by Gene Crescenzi, petitioner's attorney (45a).

Further, at the June 28, 1978 hearing, petitioner Anna Stanton Green personally appeared before the court and testified (46a). Justice Sirignano's written opinion and order upon that hearing (44a-47a) reflect that his observations from the bench[5] comport with those of the court-appointed psychiatrist.

Most significantly, at all times Dr. Moorehead acted pursuant to a valid order of the New York State Supreme Court, Westchester County, and there is no suggestion in the record, neither does petitioner argue, to the contrary.

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5. Although the conservatee testified at the hearing that she is capable of managing her property and she had done so prior to the institution of the original conservatorship proceeding, her testimony and demeanor at the hearing showed a lack of understanding of the true nature of the proceeding. She constantly rambled on and interrupted witnesses as well as her own attorney who was questioning the witnesses. She failed to show a comprehension of the nature of the proceeding although she did appear alert.

Sirignano Opinion, June 29, 1978, 46a.

REASONS FOR DENYING THE WRIT

The writ should be denied not merely because the petition fails to present any of the considerations governing review on certiorari set out in Rule 17[6] but because the petition fails to state any serious ground whatsoever upon which review might be considered. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955). When faced with the identical arguments as are now brought to this Court, the Second Circuit Court of Appeals said

> In view of the frivolousness of this proceeding, the reckless misuse of process by appellant's counsel, including his attempted invocation of federal criminal anti-racketeering statutes (citations omitted), and his intemperate characterization of defendants' conduct as "larcenous tyranny", "semantic trickery", "gross chicanery", and "extortion", all of which deserves reference to the Bar Association's Grievance Committee for appropriate disciplinary action (citation omitted) it is further ordered that double costs shall be assessed against appellant pursuant to F.R.A.P. 38, to be paid by her counsel Gene Crescenzi, pursuant to Title 28 U.S.C. §1927. Acevedo v. I.N.S., 538 F. 2d 918 (2d Cir. 1976).

Court of Appeals Opinion dated January 8, 1980 (3a).

As is developed below, petitioner's primary argument, that pyschiatry is not medical science but is rather secular religion, is not a serious ground for review, neither is it supported by any decision of this Court. Further, the doctrine of judicial immunity

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6. We also note that petitioner has ignored the accuracy, brevity and clarity requirements of Rule 21.5 and appears to have abandoned presentation of any issues other than those under the First Amendment.

was properly recognized by the courts below to bar any action against respondent Harry Moorehead. Finally, the courts below correctly disposed of the federal statutory claims against respondent Moorehead and the dismissal of those claims ought not be reviewed by this Court.

I.

No serious First Amendment religion argument is presented.

Petitioner argues that psychiatry is not the *bona fide* practice of medicine but is, rather, a religion to which she does not subscribe. Petitioner urges that she presents a case of first impression (Petition at 10), and although petitioner is concededly correct that her claim has never before been presented to this Court *in haec verba (id.),* this Court has repeatedly and consistently approved and even required the use of psychiatric testimony, as it was used by Justice Sirignano, to guard the Fifth and Fourteenth Amendments due process rights of litigants. *See, e.g., Vitek v. Jones,* ____ U.S. ____, 100 S. Ct. 1254 (1980); *Parham v. J.R.,* 442 U.S. 584 (1979); *Addington v. Texas,* 441 U.S. 418 (1979); *Jackson v. Indiana,* 406 U.S. 715 (1972); *Specht v. Patterson,* 386 U.S. 605 (1967); *Baxstrom v. Herold,* 383 U.S. 107 (1966).

The Court recognized in *Addington v. Texas, supra,* that fact findings were merely the first step in making proof in a civil committment proceeding, stating

> [W]hether [a person] is mentally ill . . . turns on the *meaning* of the facts which must be interpreted by expert psychiatrists and psychologists.

441 U.S. at 429.

In *Parham v. J.R.,* 442 U.S. 584 (1979) cited by way of example by the Second Circuit Court of Appeals in the case at

bar[7] (2a), the Court passed upon Georgia's procedures for voluntary admission of children to a state mental hospital. The Court in *Parham,* after quoting favorably from *Addington v. Texas, supra,* observed that

> Although we acknowledge the fallibility of medical and psychiatric diagnosis, see *O'Connor v. Donaldson,* 422 U.S. 563, 584 (1975) (concurring opinion), we do not accept the notion that the shortcomings, of specialists can always be avoided by shifting the decision from a trained specialist using the traditional tools of medical science to an untrained judge or administrative hearing officer after a judicial-type hearing.

442 U.S. at 609.

It is therefore most respectfully submitted that petitioner's reasons for granting the writ, as they purport to raise First Amendment issues surrounding her freedom of religious choice are, indeed, frivolous.

The cases upon which petitioner would rely (Petition at 9), *Reynolds v. United States,* 98 U.S. 148 (1878) (polygamy pursuant to religious tenets may be banned); *Abington School District v. Schempp,* 374 U.S. 203 (1963) (compulsory public school prayers and Bible readings establish religion); *Torcaso v. Watkins,* 367 U.S. 488 (1961) (state may not require those holding public office to aver their belief in the existence of God); *Board of Education v. Barnette,* 319 U.S. 624 (1943) (compulsory public school flag salute impermissible over student religious objection), are inapposite. Further, although the word "religion" is not defined in the Constitution and the breadth of its constitutional meaning must be found elsewhere, *Reynolds v.*

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7. Thus, petitioner's suggestion that the *Parham* holding was given improper retroactive application to her is misplaced.

United States, 98 U.S. 244, 249 (1878), petitioner has not demonstrated any issue of substance which goes beyond matters of intellectual curiosity. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955). "[T]his Court does not sit to satisfy a scholarly interest in such issues." *Id.* 394 U.S. at 74.

II.

Moorehead shares Justice Sirignano's judicial immunity as the court-appointed physician.

Even if petitioner's First Amendment argument were substantial, that argument together with every other allegation which she presents against Dr. Moorehead is barred by the doctrine of judicial immunity. *Pierson v. Ray,* 386 U.S. 547 (1967); *Bradley v. Fisher,* 13 Wall. 335 (1872).[8] The cloak of judicial immunity embraces Dr. Moorehead, who was duly appointed by Justice Sirignano's December 29, 1977 order[9] (117a-119a) and whose only contact with the petitioner involved the Westchester County Supreme Court's inquiry into the need

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8. *Phillips v. Singletary,* 350 F. Supp. 297 (D.S.C. 1972) is closely on point. There the court held:

> It is an uncontroverted fact that Dr. Davis, the county physician, examined the plaintiff at the behest of the court. Physicians appointed by the court to conduct examinations of persons under the jurisdiction of that court are an arm of that court and, as such, are, while acting pursuant to and in the scope of such appointment, afforded the same immunities from civil suit as other quasi-judicial officers. Burkes v. Callion, 433 F. 2d 318 (9 Cir. 1970); Bartlett v. Duty, 174 F. Supp. 94 (N.D. Ohio 1959).

Id. 350 F. Supp. at 300.

9. In the recent decision of *Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 48 U.S.L.W. 4620 (No. 79-198, June 2, 1980), the Court adhered to the rule in *Bradley v. Fisher, supra.*

for a conservator of her property pursuant to Mental Hygiene Law §77.01. *See Butz v. Economou,* 438 U.S. 478 (1978). There is no suggestion that Justice Sirignano was without jurisdiction to appoint Bartholomew conservator or that the Supreme Court, Westchester County acted without its jurisdiction in any way. *See Stump v. Sparkman,* 435 U.S. 349 (1978).

III.

Petitioner's federal statutory claims were properly rejected below.

Moorehead's judicial immunity extends to claims under the Civil Rights Act, 42 U.S.C. §1983. *Pierson v. Ray,* 386 U.S. 547 (1967). *See also, Brooks v. Peters,* 322 F. Supp. 1273, 1276 (E.D. Wisc. 1971).

The district court recognized that nothing of which petitioner would complain even remotely resembles racketeering (33[p]a), and there is nothing in the record to factually support any claim under 18 U.S.C. §1961, *et seq.* The Westchester County Supreme Court's actions pursuant to N.Y. Mental Hygiene Law §77.19 (McKinney 1978) in furtherance of "the preservation, maintenance, and care of the conservatee's income, assets and personal well being," *id.,* are the precise negative of extortion. *United States v. Hyde,* 448 F. 2d 815, 843 (5th Cir. 1971), *cert. denied,* 404 U.S. 1058 (1972).

Therefore, it is respectfully submitted that there are no special nor important reasons for granting certiorari presented by this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: July 31, 1980

Respectfully submitted,

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